

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Griffin Sherbert	Team: Squad #7	CCRB Case #: 201904282	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 04/18/2019 11:30 PM	Location of Incident: Intersection of West 135th Street and Lenox Terrace Place	Precinct: 32	18 Mo. SOL 10/18/2020	EO SOL 6/4/2021	
Date/Time CV Reported Fri, 04/19/2019 8:44 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 04/19/2019 8:44 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Jonathan Cannizzaro	04278	951588	025 PCT
2. POM Hector Figueroa	16620	955915	033 PCT
3. POM John Nugent	16211	950962	INT CIS

Officer(s)	Allegation	Investigator Recommendation
A.POM Jonathan Cannizzaro	Abuse: Police Officer Jonathan Cannizzaro stopped § 87(2)(b)	
B.POM Hector Figueroa	Abuse: Police Officer Hector Figueroa stopped § 87(2)(b)	
C.POM John Nugent	Abuse: Police Officer John Nugent stopped § 87(2)(b)	
D.POM Jonathan Cannizzaro	Abuse: Police Officer Jonathan Cannizzaro frisked § 87(2)(b)	
E.POM Hector Figueroa	Abuse: Police Officer Hector Figueroa searched § 87(2)(b)	
F.POM Jonathan Cannizzaro	Abuse: Police Officer Jonathan Cannizzaro failed to provide § 87(2)(b) with a business card.	
G.POM Hector Figueroa	Abuse: Police Officer Hector Figueroa failed to provide § 87(2)(b) with a business card.	
H.POM John Nugent	Abuse: Police Officer John Nugent failed to provide § 87(2)(b) with a business card.	
§ 87(4-b), § 87(2)(g)		

Case Summary

On April 19, 2019, Yvette § 87(2)(b) called the CCRB and filed the following complaint on behalf of her son, § 87(2)(b).

On April 18, 2019, at approximately 11:30 pm., § 87(2)(b) was walking to his vehicle, parked near the intersection of West 135th Street and Lenox Terrace Place in Manhattan, when Police Officer Jonathan Cannizzaro, Police Officer Hector Figueroa, and Police Officer John Nugent of the Patrol Borough Manhattan North Specialized Unit (“PBMN SU”) approached and stopped him (**Allegations A,B, and C: Abuse of Authority—Stop**, § 87(2)(g)). PO Cannizzaro then allegedly frisked § 87(2)(b) while PO Figueroa allegedly searched through a black plastic bag in § 87(2)(b) possession (**Allegation D: Abuse of Authority—Frisk**, § 87(2)(g)). **Allegation E: Abuse of Authority—Search (of person)**, § 87(2)(g). After concluding the frisk and search which did not result in an arrest or summons, PO Cannizzaro, PO Figueroa, and PO Nugent left the area without providing any Right to Know Act (“RTKA”) business cards to § 87(2)(b) (**Allegations F, G, and H: Abuse of Authority—Failure to provide RTKA card**, § 87(2)(g)).

The investigation obtained surveillance footage (Board Review 01) from Fine Fare Supermarket at 24 West 135th Street, which captured portions of this incident. The investigation’s requests for Body-Worn Camera (“BWC”) footage were all returned with negative results (BR02).

Findings and Recommendations

Allegation A—Abuse of Authority: Police Officer Jonathan Cannizzaro stopped § 87(2)(b)

Allegation B—Abuse of Authority: Police Officer Hector Figueroa stopped § 87(2)(b)

Allegation C—Abuse of Authority: Police Officer John Nugent stopped § 87(2)(b)

On April 18, 2019, at approximately 11:30 p.m., § 87(2)(b) (BR03) was walking eastbound on West 135th Street toward his vehicle parked near the intersection of Lenox Terrace Place and West 135th Street in Manhattan. § 87(2)(b) was carrying a black plastic bag containing a few items he had purchased from a nearby deli, and his car keys were on a string around his neck. § 87(2)(b) did not have anything in his pockets, make any stops, or speak to anyone while en route from the deli to his vehicle.

As he crossed Lenox Terrace Place while on West 135th Street, § 87(2)(b) saw a silver, unmarked RMP sedan, double-parked halfway down the block on Lenox Terrace Place, which contained three plainclothes officers, identified by the investigation as PO Cannizzaro, PO Figueroa, and PO Nugent. After seeing the officers, § 87(2)(b) changed direction and walked back across Lenox Terrace Place. The officers exited their vehicle, and immediately approached and stopped § 87(2)(b) by surrounding him in a triangle formation on the sidewalk.

§ 87(2)(b) account is consistent with the surveillance video from Fine Fare Supermarket (BR01), which captures the intersection of West 135th Street and Lenox Terrace Place in Manhattan. The video begins showing a silver sedan double-parked in the center of the frame. At the 3-second mark, an individual, identified through the investigation as § 87(2)(b) walks eastbound through the crosswalk. As he reaches the center of the crosswalk, § 87(2)(b) turns toward the silver sedan, briefly pauses, and then turns and walks back to the left hand corner. At the 30-second mark, PO Cannizzaro, PO Figueroa, and PO Nugent exit the silver sedan, and approach § 87(2)(b) on the corner.

§ 87(2)(b) (BR03) described PO Cannizzaro as a white male in his 30's, who stood approximately 6'3" tall, weighed 260 pounds, bald, no facial hair; PO Figueroa as an Indian or black male in his 30's, who stood approximately 5'10" tall, with an average build, and short black hair with a beard; PO Nugent as a white male, with a slightly stocky build. All three officers were dressed in plainclothes during the incident.

PO Cannizzaro (BR04) is a § 87(2)(b) -old white male, who stands 6'2" tall, weighs 250 pounds, has a shaved head and no facial hair. PO Figueroa (BR05) is a § 87(2)(b) -old Hispanic male, who stands 6'0" tall, weighs 175 pounds, and has black hair with a beard. PO Nugent (BR06) is a § 87(2)(b) -old Hispanic male, who stands 5'9" tall, weighs 160 pounds, and has black hair and brown eyes. All three officers were dressed in plainclothes on the date of the incident.

PO Cannizzaro (BR04), PO Figueroa (BR05), and PO Nugent (BR06) did not have any independent recollection of this incident, or prepare any relevant memo book entries, and thus were unable provide any substantive testimony in regards. However, the officers confirmed they were working together during the incident, and PO Nugent noted in his memo book that he and his partners were assigned unmarked RMP #371 (BR07), which is corroborated by the PBMN SU Roll Call (BR08). Additionally, an Automatic Vehicle Location ("AVL") search conducted for RMP #371 (BR09), while erroneously listing three uninvolved officers, found that on April 18, 2019, at 11:31 p.m., RMP #371 was located at 55 Lenox Terrace Place, approximately halfway down the block, and the exact location where the silver sedan is seen double-parked in the above cited surveillance video (BR01).

The officers consistently testified that (BR04-BR06) they did not recognize § 87(2)(b) by name or photograph, nor recalled stopping, or witnessing any other officer stop § 87(2)(b). However, after reviewing the surveillance footage, PO Cannizzaro (BR04) identified himself in the video as the individual seen exiting the passenger side of the silver sedan, although he still did not recall being involved in this incident. Additionally, after PO Figueroa (BR05) reviewed the footage, he acknowledged that he and his partners have previously parked at the location seen in the video, that the vehicle appeared to be a silver Ford Taurus which PBMN used at the time, and stated that the officers seen in the footage "could be us."

§ 87(2)(g)

Whether or not a particular search or seizure is to be considered reasonable requires a weighing of the government's interest against the encroachment involved with respect to an individual's right to privacy and personal security. [...] Before the police may stop a person pursuant to the common-law right to inquire there must exist at that moment a founded suspicion that criminal activity is present. [...] Innocuous behavior alone will not generate a founded or reasonable suspicion that a crime is at hand. People v. De Bour, 40 N.Y.2d 210 (1976) (BR10).

§ 87(2)(g)

§ 87(2)(g)

Allegation D—Abuse of Authority: Police Officer Jonathan Cannizzaro frisked § 87(2)(b)

Allegation E—Abuse of Authority: Police Officer Hector Figueroa searched § 87(2)(b)

Allegation F—Abuse of Authority: Police Officer Jonathan Cannizzaro failed to provide § 87(2)(b) with a business card.

Allegation G—Abuse of Authority: Police Officer Hector Figueroa failed to provide § 87(2)(b) with a business card.

Allegation H—Abuse of Authority: Police Officer John Nugent failed to provide § 87(2)(b) with a business card.

After the officers stopped § 87(2)(b) (BR03), PO Figueroa asked § 87(2)(b) a series of questions, including what was in the plastic bag, what was he doing that night, why was he nervous, did he have something to hide, and then asked § 87(2)(b) what was he hiding. § 87(2)(b) did not respond to PO Figueroa's questions. PO Cannizzaro frisked § 87(2)(b) without asking permission or obtaining § 87(2)(b) consent, wherein he patted down the exterior of § 87(2)(b)'s clothing and squeezed his pockets from the outside. PO Figueroa took § 87(2)(b)'s grocery bag from him, took the contents out and examined them, returned the bag to him, and the officers walked away. § 87(2)(b) added that the officers did not ask for his identification, or provide him with their RTKA business cards before walking away.

Due to the poor video quality, low-level of light during recording, and distance between camera and subjects, the surveillance footage (BR01) does not capture the above alleged conduct, or any particular, identifiable interaction between the § 87(2)(b) and the officers. Between the 49-second mark and the 1:49 minute mark of the footage, wherein the alleged conduct occurred, the only observable actions are brief flashlight illuminations. The investigation utilized Input-Ace to produce a cropped, enlarged, and level-adjusted copy of the surveillance footage (BR11), to focus on and brighten the darkened area where § 87(2)(b) was stopped. While the produced copy of the footage (BR11) more clearly shows the officers using their flashlights, and potentially illuminating § 87(2)(b) torso during the stop, due to the heavy pixelization of the copy, no other observable actions are clearly identifiable.

At the 1:50 minute mark of the footage (BR01), the officers walk back to their silver, unmarked RMP, as § 87(2)(b) walks to the edge of the crosswalk and appears to throw something into the street. § 87(2)(b) then walks across and stops in the middle of the crosswalk on West 135th Street, as the RMP drives away.

PO Cannizzaro (BR04), PO Figueroa (BR05), and PO Nugent (BR06) did not recall any aspect of this incident, prepare any relevant memo book entries, or provide any substantive testimony in regards. As such, PO Cannizzaro (BR04) did not recall frisking § 87(2)(b). PO Figueroa (BR05) did not recall searching the black plastic bag in § 87(2)(b) possession, and PO Nugent (BR06) did not recall witnessing either of his partners frisk § 87(2)(b) or search through his effects. PO Cannizzaro, PO Figueroa, and PO Nugent also did not recall refusing or failing to

provide § 87(2)(b) with their RTKA business cards, while acknowledging they had them at the time of the incident.

Officers are required to offer a business card at the conclusion of the following law enforcement activities, except in cases when a summons is issued or an arrest is made, as follows: noncustodial questioning of individuals suspected of criminal activity; a stop where an officer has an individualized, reasonable suspicion that the person stopped has committed, is committing, or is about to commit a crime and where a reasonable person would not feel free to end the encounter; frisk; and/or a search of persons or property, including vehicles. Patrol Guide, Procedure 203-09 § (a)(b)(c)(d) (BR12).

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) has been a party in two prior CCRB cases.
 - § 87(2)(b)
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- PO Cannizzaro, an eight-year-member-of-service, has had seven prior CCRB complaints filed against him, with a total of 17 allegations, none of which were substantiated (see Officer History). § 87(2)(g)
- PO Figueroa, a six-year-member-of-service, has had three prior CCRB complaints filed against him, with a total of three allegations, one of which was substantiated (see Officer History).
 - In CCRB #201702181, a vehicle search allegation was substantiated against PO Figueroa, the CCRB recommended Command Level instructions, however, the NYPD declined to order disciplinary action.
 - In CCRB #201910288, frisk, search (of person), and failure to provide RTKA card allegations have been pleaded against PO Figueroa, pending investigation.
- PO Nugent, a nine-year-member-of-service, has had five prior CCRB complaints filed against him, with a total of 10 allegations, none of which were substantiated (see Officer History). § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) rejected the offer to mediate this complaint.
- As of April 10, 2020, § 87(2)(b) has not filed a Notice of Claim in regards to this incident, based upon a FOIL request sent to the NYC Comptroller's office that was returned with negative results (BR16).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 7

Investigator:	<u>Griffin Sherbert</u>	<u>Griffin Sherbert</u>	<u>12/18/2020</u>
	Signature	Print Title & Name	Date
Squad Leader:	<u>Manager Vanessa Rosen</u>	<u>12/18/2020</u>	
	Signature	Print Title & Name	Date

Reviewer:

Signature

Print Title & Name

Date